

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

EX PARTE GOUGH ET AL.

Application for Patent

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Serial No.: 09/997,322

Examiner Pham, Khanh B. Art Unit 2166

**METHOD AND APPARATUS FOR
THE PRODUCTION, DELIVERY AND RECEIPT OF ENHANCED E-MAIL**

REPLY BRIEF

I. STATUS OF CLAIMS

Claims 1, 33-51, 61-65 and 84-86 have been rejected.

Claims 2-32, 52-60, 66-83 and 87-98 have been canceled.

Claims 1, 33-51, 61-65 and 84-86 are the subject of this appeal.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. The rejection under 35 U.S.C. 102(b) of claims 46-51 and 61-65 as being anticipated by XP-002150023 ("Streaming Email")
- B. The rejection under 35 U.S.C. 102(c) of claims 84-86 as being anticipated by U.S. Patent No. 6,223,213 of Cleron et al.
- C. The rejection under 35 U.S.C. 103(a) of claims 1 and 33-45 as being unpatentable over XP-002150023 ("Streaming Email") in view of Tolba et al. ("Pure Java-based Streaming MPEG Player")

III. ARGUMENT

Appellant has considered the Examiner's Answer but respectfully traverses. This will be addressed on a claim-by-claim basis.

- A. The rejection under 35 U.S.C. 102(b) of claims 46-51 and 61-65 as being anticipated by XP-002150023 ("Streaming Email")

Streaming Email describes "The Video Express Email" product that attaches one or more files to an email. These files include a pointer file and an optional player file which starts the player file. The player file is not required to be attached to the e-mail if it has already been installed on the user's machine. The pointer file points to an audio/visual file which is streamed to the player.

Streaming Email *teaches away* from Appellant's claimed embodiments which do not use email attachments to provide a player. Instead, Applicant's claimed embodiments provide self-executing code provided within the email body itself or downloaded over a network after the email has been opened. The disadvantage of using e-mail attachments is clear. With Streaming Email a user must, after opening an email, install the player file (if it has not already been installed) and then execute the player file to play a streaming video. Streaming Email therefore neither automatically starts the player file upon an opening of the email nor does Streaming Email play the video within the context of the email. In fact, Streaming Email cannot automatically start the player file upon an opening of an email because attachments to emails cannot be started automatically (if they were, imagine the problems with email-delivered viruses). Furthermore, Streaming Email cannot be played within an email, because executable attachments are modal and are opened in their own windows.

Appellants have made it very clear in their Specification that the claimed embodiments do not include one or more attachments to an email. *See*, for example:

In one embodiment, hypertext markup language may be included with the first electronic message to contain the parameters and call

another portion of the first application program such as a JA VA APPLETT located at another site on the network. It should be noted, however, that the hypertext markup language itself or any other computer or markup language included with first electronic message may constitute a component or an entirety of the first application program. In other words, any desired portion (including no portion) of the first application program may be positioned at a separate location on the network. (Appellant's Specification, page 13, line 30 to page 14, line 2)

Not only does Streaming Email attach the player file to the email (if needed), it also attaches a "text pointer file." The pointer file is used to point to the location on the Internet where the streaming video resides and also calls up (i.e. begins the execution of) the player file, which would have to be installed previous to the activation. Clearly, if Streaming Email were able to automatically stream a video within an email, the pointer and player file call would be embedded with the body of the email. However, if it were embedded within the body of the email, it could not call up the installed player file. Again, this is clear evidence that Streaming Email *teaches away* from the embodiments claimed by Appellants.

Claim 46

It is undisputed by Appellants and the Examiner that the elements of claim 46 are means-plus-function elements. Therefore, there is no dispute that the claim elements meet the "3-prong" analysis for claims falling within 35 U.S.C. 112, 6 as used by the USPTO. The USPTO must therefore apply 35 U.S.C. 112, sixth paragraph and "give claims their broadest reasonable interpretation, in light of and consistent with the written description of the invention in the application." See *Donaldson*, 16 F.3d at 1194, 29 USPQ2d at 1850 (emphasis added)

The Examiner on pages 16-17 of his Answer alleges that he has made a "Prima Facie Case of Equivalents" by in rejecting claim 46 over Streaming Email. The Examiner is therefore explicitly indicating that the structure of Streaming Email (i.e. the use of attachments to download a player file and a pointer file) is different from Appellants'

structure as disclosed in the application. With that, Appellants do not disagree. However, Appellants strongly disagree that the functions specified by claim 46 can be performed by the structure disclosed by Streaming Email and, therefore, further strongly disagree that the structure of Streaming Email is an equivalent of Appellant's disclosed structure.

By way of non-limiting examples, the structure of Streaming Email cannot perform at least the following claimed functions: 1) associate a self-executing program operative to stream an audiovisual enhancement; 2) display the audiovisual enhancement in conjunction with the message; and 3) create the display automatically upon the selection of the message.

As noted above, attachments to emails as disclosed in Streaming Email cannot perform any of these functions. First, attachments to email are not self-executing. If they were, computers would be completely vulnerable to attack by malicious software sent by e-mail. Second, executable attachments (unlike, for example, Applets) must be installed on the computer and are run outside of the e-mail environment. Third, the display of Streaming Email cannot be effectuated upon the selection of the method for same reasons as set forth in the previous two points.

The self-executing functionality of Appellant's claimed embodiments finds support throughout the specification and drawings. For example, on page 11, lines 22-23, it is disclosed that "The message content ... may be enhanced by a self-executing program." That is, the program enhancement is part of the message content of the e-mail, not a separately installed and running program outside of the email.

This functionality is explained, in part, by various examples. See, for example, page 12, lines 18-22 where Appellants teach:

Figures 4-11 illustrate a method and a system for providing an application program adapted to be incorporated as a "payload" of an electronic message. Such application program is automatically initialized after the electronic message is selected by a user. After initialization, the application program is executed. The execution of the application program includes various features.

The foregoing description makes it clear that an application program is provided as part of the electronic message such that it is automatically initialized and executed by the selection by the user.

An example of a process for automatic instantiation and execution is found in Fig. 4:

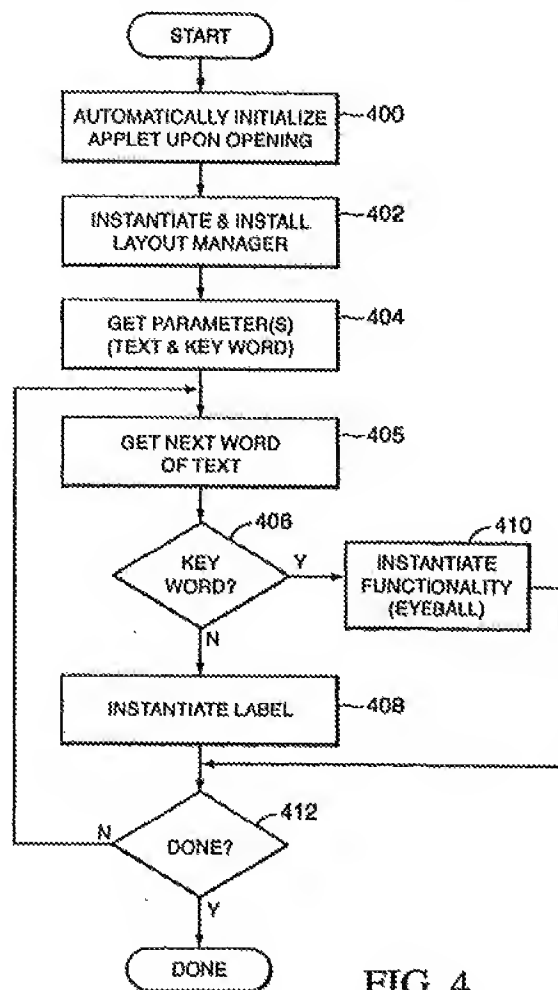


FIG. 4

As seen in this example embodiment, an Applet is automatically initialized upon the opening of the email. An Applet is a transient program which executes without being installed on a computer and is well suited for the claimed embodiments because the code can be embedded within the body of the e-mail or downloaded over the Internet using an HTML tag including a hyperlink. See, for example, page 19, lines 32-34:

In another embodiment, the execution of the first application program may include linking a string of the text of the first electronic message with a site on the network. In other words, such string constitutes a hyperlink. In such embodiment, the execution of the first

See, also, page 12, lines 23-32:

For example, such execution may include displaying text included with the first electronic message, displaying indicia, allowing entry of text, and sending the entered text
25 and the application program over a network in a second electronic message to a second user upon selection of the indicia. In one embodiment, a code segment may be executed which includes as a parameter at least a portion of the text included with the electronic message, thus incorporating the text with any type of functionality, i.e. graphic, etc. Still yet, other features may be included such as an advertisement that is displayed only after the electronic
30 message is forwarded a predetermined number of instances. Also, the text included with the electronic message may constitute a hyperlink which, when selected, links to a site and enters the text as a parameter upon such linking.

It is clear from the foregoing paragraph that "the code segment may be executed ... incorporating the text with any type of functionality, i.e. graphic, etc." and that "the text included within the electronic message may constitute a hyperlink... ."

The Applet of Fig. 4 includes the program steps for instantiating "eyeball" functionality, wherein key words in the email body are replaced with animations, such as an "eyeball", as illustrated in Fig. 5 and 6:

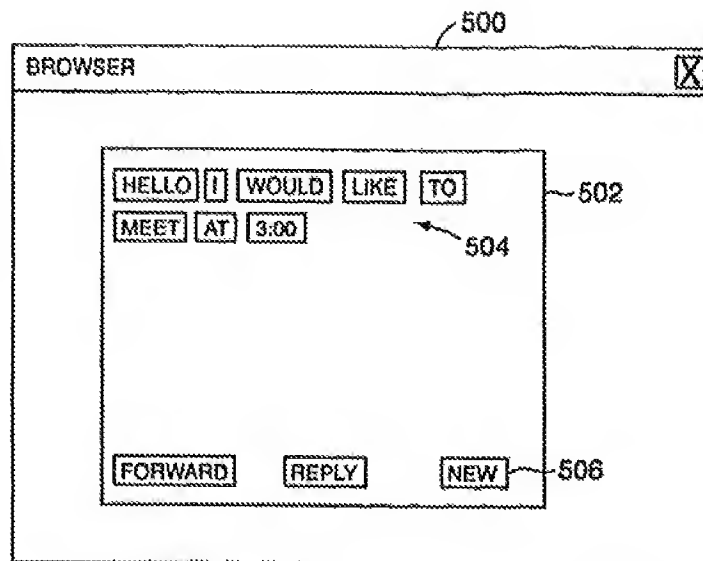


FIG. 5

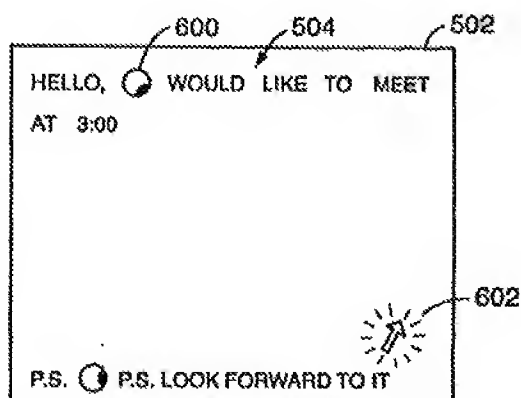


FIG. 6

Note how the word "I" of Fig. 5 has been changed to an animated "eyeball" 600 in Fig. 6.

The embodiment of claim 46 is directed to a video e-mail as illustrated in Fig. 12:

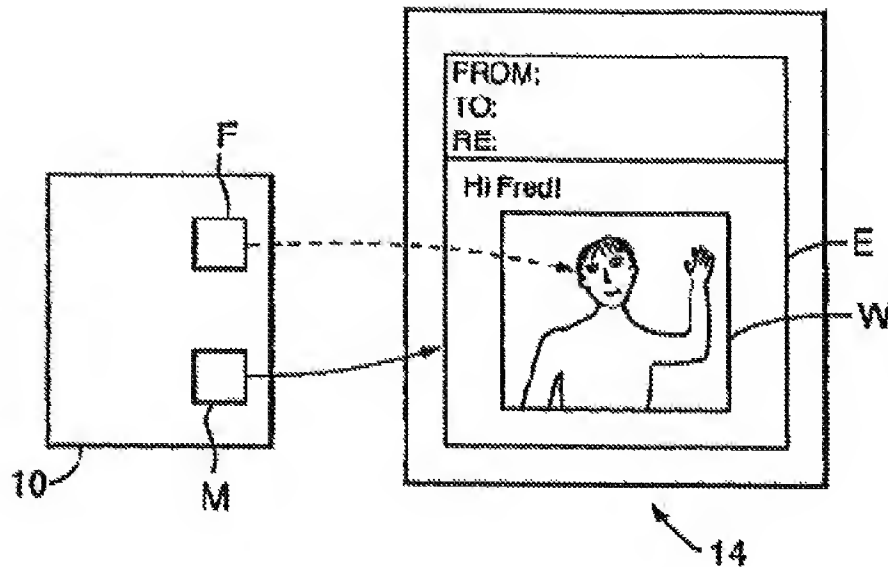


FIG. 12

The operations of several potential audio and/or visual embodiments are discussed from page 20, line 29 to page 21, line 6.

In Figure 12, audio and/or visual content can be "e-mailed" to one or more recipients.
 30 There are several ways of implementing this feature, as will be appreciated by those skilled in the

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art. A preferred method is for a member to provide an audio and/or e-mail message which is stored on server 10 as a file F. In addition, a text message can be stored as a file M. The web site then creates an e-mail message E which is displayed on a recipient's machine 14 that includes (for visual messages) a window W for the display of video information (VideoMail).
 5 This video information can be a part of the e-mail message, or it can be streamed from the server 10 over the network, as will be appreciated by those skilled in the art.

Streaming Email is a book chapter which describes a product known as "Video Express Email." With Video Express Email a "text pointer (or redirector) file" is attached to an e-

mail as an e-mail attachment. The text point file is not an application program and cannot be executed as an application program. Instead, it works in conjunction with a player program which must be installed on the computer of the recipient of the e-mail in order to stream video to the computer. If the recipient does not have the player program installed, it can also be attached to the e-mail for subsequent installation. See, for example, page 309 of Streaming Email:

Perhaps the best way to experience Video Express Email is to view files that are sent to you. Visit ImageMind's website to send yourself some mail; you can choose from audio, video, or slide shows. Just enter your name, email address, and Internet connection speed and you will be sent a file via email. If this is your first time using Video Express Email, check the option to receive the player, too. In a few minutes, you will receive the test email. Simply use any email program to open it, install the player, and then view the audio or video message.

In view of the foregoing, e-mails created by Video Express Email software are standard e-mails to which one or more files are attached. If the recipient already has the player program, only the text pointer file¹ is attached. Therefore, in the most common embodiment a Video Express Email does not include any program that can stream audio and/or video. Video Express Email solves this (in a rather clumsy fashion) by allowing a sender to attach a Video Express Email Player to the first Video Express Email message sent to a particular recipient. See, for example, page 311 of Streaming Video:

5. If this is the first Video Express Email message that your recipient will receive, he or she will need to download and install the Video Express Email Player. Check the box that reads "Include VEMail Player" to attach a copy of the player along with the rest of the message. Optionally, your recipient can visit Image Mind's website to download the player, which will need to be installed once per computer.

Clearly, the "application program" VEMail Player is not capable of self-executing upon the selection of an e-mail message to stream an audiovisual enhancement to the recipient.

¹ "The pointer files are very small text files, usually no more than 1K..." See, Streaming Video, page 305

A Video Express Email is therefore received as a standard email with one or two attachments. If VEMail is attached, it is installed on the recipient's computer with what looks to be an standard installation procedure for executable files. Once VEMail is attached, the text pointer file is selected with a "double click", which launches the installed VEMail application to start streaming video into a window on the recipient's computer screen. See, for example, the bottom of page 312 and Fig. 18.6:

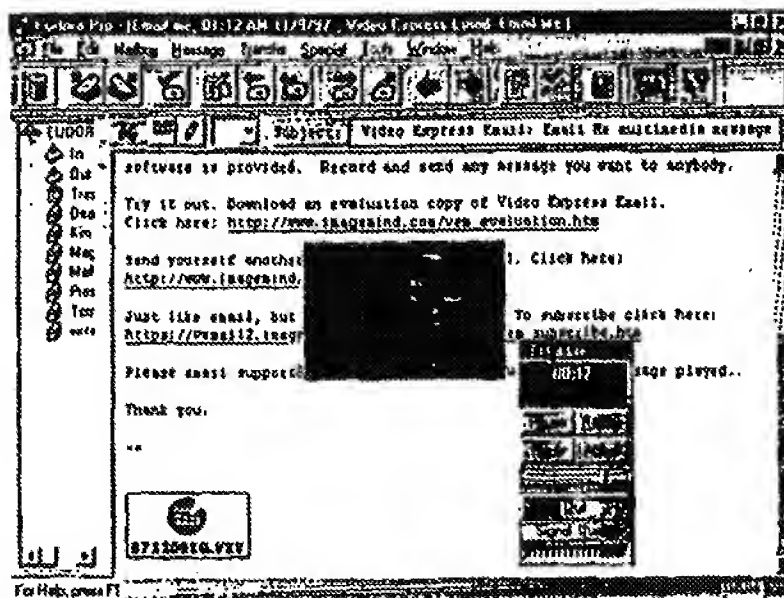
When you receive Video Express Email, you get your message the same way as you receive your other emails. Use your regular email program to check your messages. You will get the Video Express Email along with the small text file attachment. Unless you chose to send the player and/or allow downloading, email retrieval from your host will be very fast.

Your email message may look something like Figure 18.5. It includes the Video Express Email player that will allow you to view and stream the file.

If you haven't already done so, click on the file called SETUP.EXE to install the Video Express Email player. Once that's done, it is installed for good and you need not install it again unless you uninstall it later.

The last step is the easiest. Most email programs like Netscape Mail and Eudora allow you to double-click on the message to launch it with its specified player. Double-click on it and the Video Express Email miniplayer should launch and play the message (see Figure 18.6). If you're having trouble receiving the

Figure 18.6 The miniplayer launches and plays the movie back for you. If you receive an audio image, you just see an animated speaker graphic.



It is therefore abundantly clear that Streaming Email *teaches away* from a self-executing program operative to stream an audiovisual attachment upon a selection of the message. With Streaming Email, a message is selected such that it is opened as shown in Fig. 18.6, the player application is installed if it is not already installed, and the text pointer file attachment of the message (see the lower left corner of Fig. 18.6) is "double clicked" to start the player. As a result, the player starts streaming video (shown here overlying and obscuring the e-mail message below) and a controller (also overlying and obscuring the e-mail message).

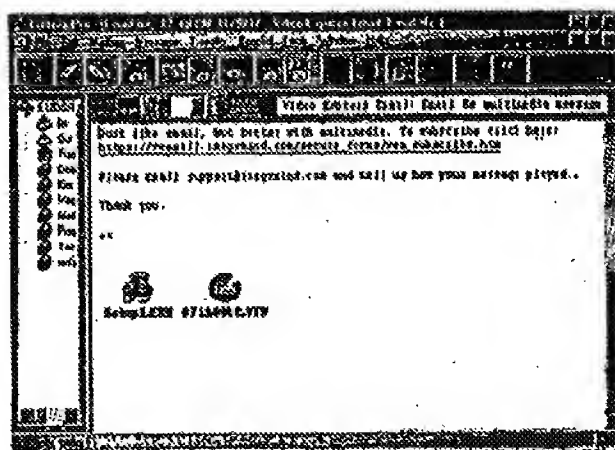
The disadvantages of Video Express Email are set forth in Streaming Video. See, for example, Streaming Video from the bottom of page 313 to the top of page 315:

Should You Use Video Express Email?

The main problem with Video Express Email is its whole underlying framework. Basically, what you send via email is just a pointer file. Once the recipient clicks on it, it loads the player and begins to stream the file. As described earlier, other streaming Windows programs can already do this and they don't need to use an

...

Figure 18.5 Your email program should display the attached file pointer and the file player called SETUP.EXE. In Eudora Pro, you can just double-click on the VOX pointer file to launch and view the Video Express Email message.



. . .

Bottom line, Video Express Email is a product for consumers—business users will not want to play with such a clumsy interface, nor will they have time to learn

It is very clear that the application is not self executing. The interface is indeed “clumsy” requiring the opening of the e-mail, the installation of the player (if not already installed) and the “double-click” of the pointer file attachment. Clearly, the structure of Streaming Video is not an equivalent under 35 U.S.C. 112, paragraph 6 in that it cannot perform the functions recited in the claim as set forth above.

For at least the foregoing reasons as well as the reasons set forth in Appellants’ Appeal Brief, Appellants’ respectfully submit that the Examiner’s rejection was in error and that his rejection should be reversed.

Claim 48

Claim 48 is dependent upon claim 46 and includes the limitation that “said audiovisual enhancement includes only an audio component.” Applicant notes that this limitation is not a means-plus-function limitation under 35 U.S.C. 112, 6.

The Examiner indicates that this limitation is met by Streaming Video on page 309. Applicant respectfully traverses. As noted in the caption for Fig. 18.6 (see above for the full figure), it specifically indicates that Video Express Email cannot just have an audio component. This is undoubtedly because the player, which is a separately installed application program, must have a window open to operate.

Figure 18.6 The miniplayer launches and plays the movie back for you. If you receive an audio image, you just see an animated speaker graphic.

For at least the foregoing reasons as well as the reasons set forth in Appellants' Appeal Brief, Appellants' respectfully submit that the Examiner's rejection was in error and that his rejection should be reversed.

Claim 61

The Examiner rejected method claim 61 as being anticipated by Streaming Email. Appellants respectfully traverse. Streaming Email does not include at least the following limitations: 1) generating a sender e-mail including a code segment in said e-mail; 2) the provision of a self-executing, transient code segment; 3) automatically downloading over a network; 4) executing within a context of said email; and 5) upon an opening of said e-mail.

Appellants' and Streaming Email have been discussed extensively above. Appellants' claimed embodiment includes a code segment provided in the e-mail. This allows an application program to be run within the e-mail itself. Streaming Video does not include a code segment in the e-mail. At best, Streaming Video attaches a code segment to an e-mail which must then be activated. Furthermore, Streaming Video does not teach a self-executing, transient code segment such as the Applet embodiment taught by Appellants. Instead, Streaming Video requires a permanent code segment (the VEMail application) to be installed on the recipient's computer and it requires a recipient to launch the VEMail application by double clicking on the text pointer file. Streaming Video furthermore does not automatically download VEMail over the Internet. Rather, VEMail is either provided as an attachment to the e-mail or the recipient must click on a link to download VEMail. Finally, as explained previously, Streaming Video does not accomplish the foregoing upon the opening of the e-mail.

For at least the foregoing reasons as well as the reasons set forth in Appellants' Appeal Brief, Appellants' respectfully submit that the Examiner's rejection was in error and that his rejection should be reversed.

Claim 62

Independent claim 62 describes an: e-mail server comprising a computer configured to receive e-mail text from a sender, associate the text with a code segment and send the code segment to a recipient in a body of an e-mail. This claim was also rejected as being anticipated by Streaming Email.

Streaming Email does not teach a server-based system. A sender must install Video Express Email on his computer in order to send out messages. See, for example, the bottom of page 308:

Another difference is that sending streaming multimedia mail with Video Express Email means installing a (large) program to send out messages. (Any email client program like Eudora, America Online, or Netscape Mail can actually receive messages.) At first glance, the program looks like any regular email program except that there are other options for recording and creating multimedia files (see Figure 18.3). You can attach stored files or record brand new audio or video programs from within Video Express Email and then send them out. Like VideoLink Mail, that means you need to have audio and, optionally, video input installed on your computer.

Streaming Email is therefore a large e-mail program which is installed on a sender's computer. Streaming Email is not a server-based system. Streaming Email therefore does not disclose a computer (*i.e.* server) configured to: 1) receive e-mail text from a sender; 2) associate the e-mail text with a code segment; or 3) sending the code segment to a recipient in a body of an e-mail, contrary to the assertions of the Examiner.

Appellants' claimed embodiment can be seen in Fig. 1 and described on page 7, lines 16-26 of Appellant's Specification:

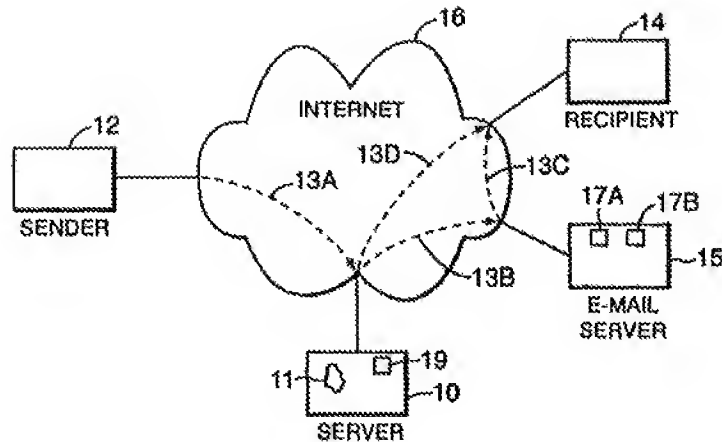


FIG. 1

In the present invention, server machine 10 "hosts" an e-mail web site 11. A sender at sender machines 12 can "upload" or enter message content to the web site 11 through the Internet 16 as indicated at 13A. This is typically accomplished via a web browser on sender machine 12 "opening" the web site 11 on the server 10. The web site 11 then, under the guidance of the sender, "enhances" the message content and sends or "e-mails" the message to one or more recipient mail boxes as illustrated at 13B. In this instance, mail boxes 17A, 17B, etc. are hosted by an e-mail server machine 15 connected to the Internet 16. Such e-mail mailboxes are provided by a variety of vendors, including America On Line (AOL), Hotmail, etc. The recipient then accesses his or her mail box to receive the enhanced e-mail at the recipient machine 14 via the Internet 16 as indicated at 13C. Alternatively, if the recipient is a member of the web site 11, he or she can receive the e-mail directly from an e-mail box 19 on the server 10 as illustrated at 13D. As noted previously, some or all of the various processes, services, mail boxes, etc. may be distributed around the network 16, as will be appreciated by those skilled in the art.

For at least the foregoing reasons as well as the reasons set forth in Appellants' Appeal Brief, Appellants' respectfully submit that the Examiner's rejection was in error and that his rejection should be reversed.

Claim 63

Claim 63 is analogous to claim 62 in that it claims software segments which can run on a server to receive e-mail text from a sender, associate the e-mail text with a code segment, and send the code segment to a recipient in a body of an e-mail. Streaming Email does not teach any of the claimed software segments as set forth above with respect to claim 62.

For at least the foregoing reasons as well as the reasons set forth in Appellants' Appeal Brief, Appellants' respectfully submit that the Examiner's rejection was in error and that his rejection should be reversed.

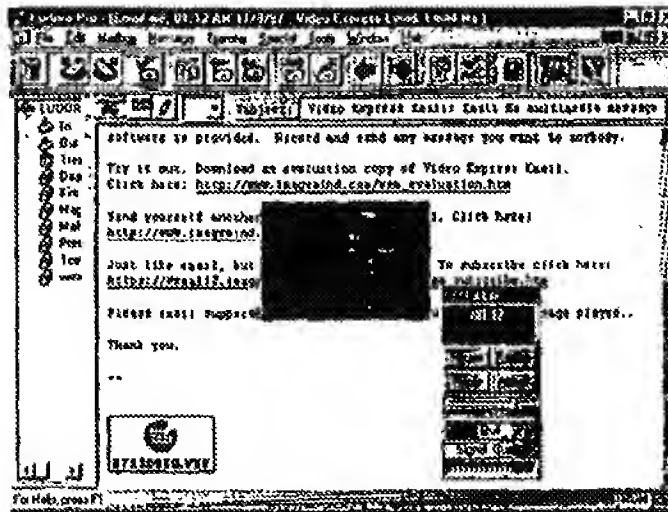
Claim 64

Claim 64 is to a method for providing e-mail including: 1) providing a link between an open e-mail on a recipient computer and a stored audio and/or video file not on the recipient computer; and 2) streaming the audio and/or video file to the recipient computer for display within the open e-mail in such a manner that other content of the e-mail which is intended to be viewed is not visually obscured. The Examiner again rejects this claim as being anticipated by Streaming Video. Appellants respectfully traverse.

First, Streaming Video does not provide a link between an open e-mail on a recipient's computer and an audio and/or video file not on the recipient computer. Streaming Video provides a text pointer file with an appropriate extension to open an installed player. The player then uses its programmed functionality and information from the text pointer file to start downloading streaming video.

Second, Streaming Video does not coordinate the display of the player with the display of an open e-mail. As noted above, Fig. 18.6 of Streaming Video clearly shows that the windows of the player are overlying and obscuring the open e-mail below. This is because the player and the e-mail programs operate entirely independently of each other. Fig. 18.6 is reproduced again below:

Figure 18.6 The miniplayer launches and plays the movie back for you. If you receive an audio image, you just see an animated speaker graphic.



In contrast, Appellants display their audio and/or visual content within the body of the e-mail and, as such, the audio and/or visual display and the text of the e-mail are under the same program control and can be coordinated to operate cooperatively, e.g. such that the audio and/or visual display does not visually obscure the text of the e-mail. See, for example, Appellant's Fig. 12, reproduced again below:

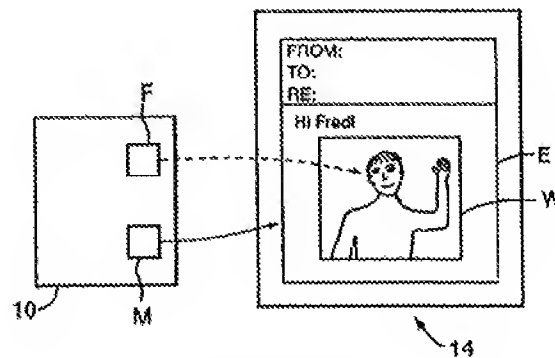


FIG. 12

For at least the foregoing reasons as well as the reasons set forth in Appellants' Appeal Brief, Appellants' respectfully submit that the Examiner's rejection was in error and that his rejection should be reversed.

Claim 65

Claim 65 is analogous to claim 64 in that it claims software segments which perform the acts recited in claim 64. Streaming Email does not teach any of the claimed software segments as set forth above with respect to claim 64.

For at least the foregoing reasons as well as the reasons set forth in Appellants' Appeal Brief, Appellants' respectfully submit that the Examiner's rejection was in error and that his rejection should be reversed.

B. The rejection under 35 U.S.C. 102(e) of claims 84-86 as being anticipated by U.S. Patent No. 6,223,213 of Cleron et al.

Claims 84-86

Claims 84-86 are related in that they comprise a method, a server, and a computer program configured to: 1) enhance an e-mail with an HTML code segment; and 2) review the enhancement of the e-mail by executing the HTML code segment prior to sending the e-mail. The Examiner rejected these claims under 35 U.S.C. 102(e) as being anticipated by Cleron. Applicant respectfully traverses.

Cleron teaches a set-top box capable of sending standard e-mails with audio and/or visual file attachments. The set-top box cooperates with a host e-mail service which sends a standard e-mail with audio and/or visual file attachments as standard MIME attachments. Cleron does not teach the enhancement of an e-mail with an HTML code segment as specified by Appellants. Furthermore, Cleron does not teach the review of the enhancement to the e-mail by executing the HTML code segment prior to sending the e-mail because Cleron does not teach the provision of HTML code segments as set forth above.

Appellants HTML code segments are transient application programs used to enhance e-mails. A non-limiting example is an Applet. Cleron simply does not teach anything like an Applet and, in fact, creates nothing more than a standard e-mail with an audio and/or video clip as an attachment.

For at least the foregoing reasons as well as the reasons set forth in Appellants' Appeal Brief, Appellants' respectfully submit that the Examiner's rejection was in error and that his rejection should be reversed.

C. The rejection under 35 U.S.C. 103(a) of claims 1 and 33-45 as being unpatentable over XP-002150023 ("Streaming Email") in view of Tolba et al. ("Pure Java-based Streaming MPEG Player")

Claim 1

Claim 1 was rejected under 35 U.S.C. 103(a) as being unpatentable over Streaming Email in view of Tolba. Applicant respectfully traverses.

Rejections under Section 103 are subject to the "all elements rule." That is, for claimed subject matter to be obvious either the prior art references must expressly reach each claim limitation exactly or else the record must disclose a reason for a person of ordinary skill in the art to modify the prior art teachings to obtain the claimed invention. See *Beckson Marine, Inc. v. NFM, Inc.*, 292 F.3d 718, 727 (Fed. Cir. 2002). Applicant respectfully submits that the combination of Streaming Email and Tolba does not meet this requirement.

For example, neither Streaming Email nor Tolba teach the provision of a server connected to a network such that a sender can input a message and an audiovisual enhancement into the server and have the server send the e-mail to at least one recipient on the network. As noted previously, Streaming Email provides the e-mail application program Video Express Email which resides on a sender's computer and which creates and sends an e-mail directly to a recipient's computer. Tolba, on the other hand, does not disclose an e-mail system at all. In fact, Tolba is an academic paper concerning the

design of a JAVA based MPEG decoder. There is no discussion in Tolba whatsoever concerning e-mails or the playing of audiovisual content with respect to e-mails. There simply is nothing in the combination of Streaming Email and Tolba which meets the limitation of providing a networked server which receives a message and an audiovisual enhancement and which then sends the enhanced e-mail to at least one recipient.

Furthermore, there is nothing in Streaming Video or Tolba which can associate the message with any audiovisual enhancement that is automatically played after opening an e-mail. Applicant therefore submits that it is improper for the Examiner to combine Streaming Video and Tolba in that fashion.

If, for argument's sake, the player program of Streaming Video were replaced with a JAVA MPEG player of Tolba the claimed process could still not be accomplished. This is because the player of Streaming Video is not associated with the e-mail program but, rather, runs separately on the computer. If, for example, an Applet from Tolba were to replace the player of Streaming Video, it would be running on a JAVA enabled browser or in some other JAVA virtual machine separate from the e-mail client because the audiovisual enhancement was never associated with the message. For example, if a Tolba Applet were attached to an e-mail, when it was double-clicked a browser or some other JAVA virtual machine would open up and run separately from the e-mail program. Therefore, the combination misses this limitation as well.

For at least the foregoing reasons as well as the reasons set forth in Appellants' Appeal Brief, Appellants' respectfully submit that the Examiner's rejection was in error and that his rejection should be reversed.

Claim 34

Claim 34 includes a similar limitation as claim 48, which was discussed above. The Examiner indicates that this limitation is met by Streaming Video on page 309. Applicant respectfully traverses. As noted in the caption for Fig. 18.6 (see above for the

full figure), it specifically indicates that Video Express Email cannot just have an audio component. This is undoubtedly because the player, which is a separately installed application program, must have a window open to operate.

For at least the foregoing reasons as well as the reasons set forth in Appellants' Appeal Brief, Appellants' respectfully submit that the Examiner's rejection was in error and that his rejection should be reversed.

Claim 40

Claim 40 is analogous to claim 1 in that it claims software segments which can run on a server to implement the process of claim 1. Neither Streaming Email nor Tolba teach the claimed software segments as set forth above with respect to claim 40.

For at least the foregoing reasons as well as the reasons set forth in Appellants' Appeal Brief, Appellants' respectfully submit that the Examiner's rejection was in error and that his rejection should be reversed.

Claim 42

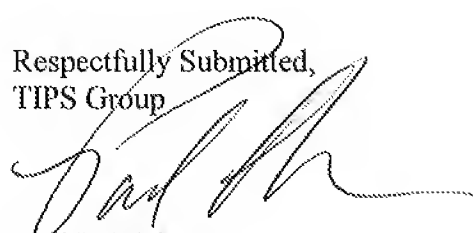
Claim 42 includes a similar limitation as claims 34 and 48, which were discussed above. The Examiner indicates that the limitation of an audio only component is met by Streaming Video on page 309. Applicant respectfully traverses. As noted in the caption for Fig. 18.6 (see above for the full figure), it specifically indicates that Video Express Email cannot just have an audio component. This is undoubtedly because the player, which is a separately installed application program, must have a window open to operate.

For at least the foregoing reasons as well as the reasons set forth in Appellants' Appeal Brief, Appellants' respectfully submit that the Examiner's rejection was in error and that his rejection should be reversed.

Conclusion

For at least the foregoing reasons and the reasons set for in Appellants' Brief, Appellants respectfully request that the Examiner be reversed.

Respectfully Submitted,
TIPS Group



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